IN THE

Supreme Court of the United States

OCTOBER TERM, 1972

No. 71-1193

UNITED STATES OF AMERICA, *Appellant*

v.

TRAVIS PAUL ENMONS, ET AL.,

On Appeal from the United States District Court for the Eastern District of Louisiana

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BRIEF OF AMICUS CURIAE, THE AMERICAN NEWSPAPER PUBLISHERS ASSOCIATION

PRELIMINARY STATEMENT

Pursuant to this Court's order entered on October 24, 1972, the American Newspaper Publishers Association was granted leave to file a brief amicus curiae in this action. In this brief, the ANPA respectfully urges that the judgment of the District Court entered on January 6, 1972, in accordance with that Court's December 16, 1971 opinion reported at 335 F. Supp. 641, be reversed.

INTEREST OF THE AMICUS CURIAE

The American Newspaper Publishers Association (hereinafter "ANPA" or Association") is a non-profit, membership corporation organized and existing under the laws of the State of New York. Its membership consists of more than 1,000 daily newspapers, representing over ninety percent of the total daily and Sunday circulation of newspapers in the United States.

The Association concerns itself with matters of general significance to the daily newspaper publishing business and to the profession of journalism. In that regard, the ANPA acts as a clearing house of information for its members by disseminating bulletins and research reports on all significant phases of the daily newspaper business. Frequently, it has taken positions on public matters which affect the interests of its members. In the case at bar, the Association desires to present its views on the question of the applicability of the Hobbs Act, 18 U.S.C. § 1951 to situations where wages are sought for superfluous and unwanted labor. In short, the Association agreed with the government's position in this case. If the District Court decision is left undisturbed, the ban of the Hobbs Act will be severely curtailed, a result, we submit, which is wholly inconsistent with this Court's decision in the *United States* v. *Green*, 350 U.S. 415 (1956).

Violence against employers and employees during the collective bargaining process must be stopped. The attainment of this objective should not and does not depend on the type of business against which the violence and threats of violence are directed. Accordingly, we make no special plea on behalf of the newspaper business. Instead, this Association would hope that the infection of violence, intimidation, and threats would

be eradicated from the entire field of labor management relations. Unfortunately, this virus cannot be remedied, we submit, without the intervention of the full power and prestige of the federal government. Application of the Hobbs Act to extortionate union demands as it was originally intended by Congress and as the government urges in this case may provide a therapeutic barrier to prevent future violent incidents in the contest of the collective bargaining process.

While we make no special plea on behalf of the newspaper publishing business, we would suggest that violence directed at newspapers during labor strikes illustrates one reason the Congress enacted the Hobbs Act. While a few newspapers have attempted to operate during union-called strikes and have, as a result, been subjected to vicious and cowardly acts of violence, the vast majority have decided to cease operations during strikes based on the experience of others in similar circumstances. In most strike situations, newspapers could continue to operate but for acts or threats of violence. Call it intimidation or prudent judgment, the fact remains that in most cases newspapers cease operation during labor strikes. Being coerced into ceasing their operations, newspapers are unable to fulfill their responsibility of informing the public; and, ultimately it is the public which must also suffer from such information blackouts.

Several illustrations of force and violence directed at certain members of this Association illustrate the degree to which labor strife has plagued the newspaper publishing business. For example, December 15, 1967, the *Los Angeles* (California) *Herald Examiner* was struck. In these few sentences, it is difficult to portray the extent of human sorrow and property damage suf-

fered by those who continued to publish this newspaper. During the short period from the beginning of the strike on December 15, 1967 until the end of February, 1968, the newspaper and even its advertisers were subjected to unrelenting violence when accords were not reached. These incidents ranged from the usual picket line threats and altercations to fire-bombing the homes of non-striking employees and murder.[1]

The strike of the *San Rafael* (California) *Independent Journal* is another tragic commentary on newspaper-labor relations. The International Typographical (ITU) struck on January 7, 1970, and during the course of one month, the newspaper was subjected to numerous union riots on its doorsteps, culminating in hand-to-hand combat with the police.[2] The newspaper's advertisers and other people who transacted business with it were intimidated by violence and threats of violence. Numerous advertiser's windows were smashed, and as in the *Los Angeles Herald-Examiner* strike, employees' homes were vandalized and bombed. In fact, the production manager was murdered in his house on the night of July 4, 1970 and a union member was found guilty and sentenced to life imprisonment.[3]

The International Mailers Union struck the *Charleston* (W.Va.) *Gazette* on November 19, 1971. Since that time, over 131 recorded acts of violence have been per-

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[1] See Los Angeles Herald Examiner, February 23, 1968, at pp. 1-2, Cols. 1.

[2] See San Rafael Independent Journal, February 15, 1970, p. 1, cols. 1, 3, and 8.

[3] See San Rafael Independent Journal, December 9, 1970, p. 1, col 8.

petrated against the newspaper, its employees and truck drivers. The vandalism has even extended to automobiles owned by the parents of delivery boys who continued to deliver the newspaper during the strike. But mere vandalism and assaults are not the only violence involved. Drivers in delivery trucks and non-striking employees in their private automobiles have been ambushed by shotgun fire. Bricks thrown by individuals in automobiles have smashed into the windshields of newspaper delivery trucks while on delivery rounds. Truck drivers have been wounded by shotgun fire while making newspaper deliveries.[4]

From this brief recitation of some members' experiences with violence associated with labor strife, it is apparent that the ANPA is concerned with the vital subject of this appeal. It is hoped that this brief will be of assistance to the Court in resolving the issue of this appeal.

ARGUMENT

At the outset, it is emphasized that the Association fully supports and adopts the arguments and points contained in the Brief for the United States. The only issue involved in this appeal is whether the Hobbs Act (18 U.S.C. § 1951) is limited to only those situations where union violence is directed at obtaining wages for unwanted or superfluous services. It is submitted that

[4] See e.g., Charleston (W.Va.) Gazette, issues of 3/27/72, 3/22/72, 3/21/72, 1/21/72, 1/22/72, 1/23/72, 1/24/72 (12A). Similarly, violence was visited on the *El Mundo* newspaper published in Puerto Rico during a strike. As a result of the violence, the newspaper on June 23, 1972 was forced to close down. The situation deteriorated to the point where employees were forced to enter and exit by helicopter to escape the brutality of the picket lines. See N.L.R.B. Hearing Examiner's findings at case No. 24-CB-802.

such a restrictive interpretation of the Act is not justified by a reading of the statute nor by this Court's opinion in *United States* v. *Green*, 350 U.S. 415 (1956). Indeed, both a reading of the statute and the *Green* decision clearly indicate that the object of the violence is not determinative of whether the violent activity is extortionate within the meaning of the Hobbs Act.

To counter the clear language of the Act, it has been argued that punishment for strike violence is a local matter which should not be embraced by the Act. Moreover, if such violence comes within the ambit of the federal legislation, then violators would be subject to both a state and federal penalty. Of course, the short answer to this argument is that many criminal acts may constitute a violation of state and federal law. Although much strike violence is subject to state law (e.g., aggravated or simple arson, conspiracy, criminal damage to property), one must not overlook the fact that the Hobbs Act is directed to the interstate character of such extortionate violence. Two separate crimes are involved. Moreover, it is submitted that violence associated with the collective bargaining process is interstate in character and effect, and therefore, peculiarly within the province of the federal government to investigate and prosecute. In this regard, Congressman Whitington stated:

> "The bill is to prevent a repetition of the physical violences by members of labor unions on those engaged in interstate commerce.* * *
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> The pending bill will provide for punishing racketeers who rob or extort. There is no justification for labor unions opposing the bill as it constitutes no invasion of the legitimate rights of labor. Rob-

bery and extortion by members of labor unions must be punished. Labor unions owe that much to the public. In demanding the protection of laws, labor unions should urge that those engaged in legitimate interstate commerce be protected from robbery and extortion. (91 Cong. Rec. 11913).

In *U.S.* v. *Green, supra,* this Court discussed the legislative history of the Hobbs Act and noted that:

> "The legislative history makes clear that the new Act was meant to eliminate any grounds for future judicial conclusions that Congress did not intend to cover the employer-employee relationship. The words were defined to avoid any misunderstanding. (350 U.S. at 419).

We submit that the dichotomy embraced by the District Court below is totally improper and unrealistic. In that decision, the District Court held that the Hobbs Act extended only to extortionate demands for wages for unwanted labor, but not to wages for desirable and necessary labor. Such reasoning, we submit, is tantamount to holding that the ends justify the means. Our society has arrived at the point where it must be firmly rooted in our jurisprudence that violence cannot be condoned or encouraged regardless of the ends to which that violence is directed. The legislative history set forth in the government's brief clearly demonstrates that Congress did not and could not have intended that the application of the Hobbs Act depends on the objects of the violence in a labor context. The Act, instead, was directed at extortionate threats and acts regardless of the reasons for those threats and acts. Any other interpretation of the Act, we suggest, would create a mind-boggling anomaly.

CONCLUSION

For the reasons stated in the government's brief, we respectfully urge that the judgment of the District Court entered on January 6, 1972, be reversed and the indictment be re-instated.

Respectfully submitted,

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